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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 760

[Docket No. 160303188-6188-01]

RIN 0694-AG92

Amendments to the Export Administration Regulations: Reporting Requirements Optional
Electronic Filing of Reports of Requests for Restrictive Trade Practice or Boycott

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to permit electronic submission as an additional method available to United States persons for reporting requests they receive to take certain actions in furtherance or support of an unsanctioned foreign boycott, as required under the restrictive trade practices or boycotts provisions of the EAR. These amendments are administrative changes to those provisions' reporting requirements, which currently permit reporting of such requests solely by mail. BIS is making these amendments consistent with U.S. Government policy to modernize regulatory requirements and promote efficiency. This rule also makes conforming regulatory changes.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Cathleen Ryan, Director, Office of Antiboycott Compliance, by telephone at (202) 482–0520 or by e-mail at Cathleen.Ryan@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Restrictive Trade Practices or Boycotts

Part 760 of the Export Administration Regulations (EAR) is entitled “RESTRICTIVE TRADE PRACTICES OR BOYCOTTS,” otherwise referred to as the antiboycott provisions of the EAR. These provisions apply to, and may prohibit, certain activities in the interstate or foreign commerce of the United States undertaken by United States persons (defined in § 760.1(b)) with intent to comply with, further or support an unsanctioned foreign boycott (see § 760.1(e)). In addition, § 760.5(a)(1), Scope of Reporting Requirements, requires United States persons to report to the Department of Commerce (Department) certain requests they receive to take any “action which has the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person...” (boycott-related requests). Section 760.5(b), Manner of Reporting, specifies the required reporting procedures; specifically, §760.5(b)(4) – (b)(7) prescribe the manner of submission of the report to the Department. Failure to report such boycott-related requests in the manner prescribed may constitute a violation of the EAR.

Prior to this rule, §760.5(b)(4) and (5) of the EAR required United States persons to prepare reports of boycott-related requests on form BIS 621-P (single transaction) or on form BIS 6051-P (multiple transactions), both available on-line through the Office of Antiboycott Compliance (OAC) page of the BIS website (OAC webpage) in a fillable PDF format, and to submit the reports in duplicate paper copy to OAC postmarked by the last day of the month following the calendar quarter in which the request was received (or, if received outside the United States, by the last day of the second month following the calendar quarter in which the request was received).

Electronic Submission of Report of Request for Restrictive Trade Practice or Boycott

While United States persons may continue to submit paper reports by mail consistent with § 760.5(b)(4) – (b)(7), this final rule amends the EAR to allow submission of reports electronically, with the same deadlines, through the OAC webpage.

These revisions amend only the manner of reporting by offering an alternative method of submitting the report; in all other respects, the reporting requirements remain unchanged. Electronic filing offers the recipient of a boycott-related request a faster and less burdensome method to fulfill the regulatory reporting requirement than paper submission by mail. This action is consistent with the Administration’s ongoing efforts to modernize regulatory requirements. Information on both paper and electronic submissions is available through the OAC webpage at <http://bis.doc.gov/index.php/enforcement/oac?id=300>.

United States persons who choose to submit reports electronically may access the electronic form via a link on the OAC webpage. Once all required fields are completed and the report has been submitted electronically, an electronic “Submission Confirmation” notification,

confirming the date and time of receipt of the submission by OAC, will automatically be displayed on the reporting person's screen. Additional guidance on accessing and completing electronic reports is available on the OAC webpage or by contacting OAC at 202.482.2448.

Amendments to Part 760 of the EAR to Establish the Electronic Filing Option for Report of Request for Restrictive Trade Practice or Boycott

In this rule, BIS amends § 760.5 (Reporting Requirements) by revising paragraph (b) to provide United States persons with the option to submit reports of boycott-related requests electronically through the OAC webpage, as described above. Specifically, in this rule, BIS authorizes the electronic reporting option by amending paragraphs (b)(4), (b)(5), (b)(6) and (b)(7) of §760.5 of the EAR.

Export Administration Act of 1979

The Export Administration Act of 1979, 50 U.S.C. 4601-4623 (Supp. III 2015) (available at <http://uscode.house.gov>), has been in lapse since August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 4, 2016 (81 FR 52587 (Aug. 8, 2016)), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and

safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves a collection previously approved by the Office of Management and Budget (OMB) under Control Number 0694-0012, “Report of Requests for Restrictive Trade Practice or Boycott – Single or Multiple Transactions,” which carries a burden hour estimate of 71 minutes to prepare and submit. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and the aforementioned OMB Control Number are expected to decrease slightly as a result of the addition of an electronic method to submit required reports of boycott requests through the OAC webpage pursuant to §760.5 (Reporting Requirements) of the EAR. Notwithstanding any other provisions of law, no person is required to respond to, or may be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b), BIS finds that publication of this rule in other than final form is unnecessary because the amendments in this rule are administrative changes. They are provided to notify the public that an electronic filing option is available as a result of the technical update of the capabilities of OAC’s information technology system. These administrative changes will not affect the rights of the public to

continue to use the report filing option that existed prior to these changes. They do not change the existing regulatory requirement that United States persons report requests they receive to take certain actions in support of restrictive trade practices or boycotts. They only offer an option to use a second method, electronic reporting, as an alternative to reporting by mail. Offering this second method may facilitate compliance with the reporting requirements.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the *Federal Register*. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. The delay in effectiveness delays the availability to the public of the additional method of filing reports. BIS is simply amending the EAR to provide a second reporting method. Further, this rule is an administrative change to assist the public in complying with reporting requirements. Delaying this action would not serve any other practical purpose. Delaying the notice to the public of the new report filing option is contrary to the interest of establishing methods of making regulatory compliance efficient, and, therefore, less burdensome.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking is not required under the APA or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 760

Boycotts, Exports, Reporting and recordkeeping requirements.

Accordingly, part 760 of the Export Administration Regulations (15 CFR parts 730 – 774) is amended as follows:

PART 760 – [AMENDED]

1. The authority citation for part 760 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

2. Section 760.5 is amended by revising paragraphs (b)(4) through (7) to read as follows:

§ 760.5 Reporting requirements.

* * * * *

(b) * * *

(4) Reports may be submitted by mail or electronically. Mailed paper reports must be submitted in duplicate to: Report Processing Staff, Office of Antiboycott Compliance, U.S. Department of Commerce, Room 6098, Washington, D.C. 20230. Electronic reports must be submitted in duplicate, by following the prompts on the screen, through the Office of Antiboycott Compliance webpage of the BIS website, <http://bis.doc.gov/index.php/enforcement/oac?id=300>. Each submission, whether paper or electronic, must be made in accordance with the following requirements:

(i) Where the person receiving the request is a United States person located in the United States, each report of requests must be postmarked or electronically date-stamped by the last day

of the month following the calendar quarter in which the request was received (e.g., April 30 for the quarter consisting of January, February, and March).

(ii) Where the person receiving the request is a United States person located outside the United States, each report of requests must be postmarked or electronically date-stamped by the last day of the second month following the calendar quarter in which the request was received (e.g., May 31 for the quarter consisting of January, February, and March).

(5) Mailed paper reports may, at the reporting person's option, be submitted on either a single transaction form (Form BIS-621P, Report of Request for Restrictive Trade Practice or Boycott, Single Transaction, (revised 10-89)) or on a multiple transaction form (Form BIS-6051P, Report of Request for Restrictive Trade Practice or Boycott, Multiple Transactions, (revised 10-89)).

Electronic reports may be submitted only on the single transaction form, which will electronically reproduce the reporting person's identifying information to facilitate reporting of multiple transactions.

(6) Reports, whether submitted on the paper single transaction form or on the paper multiple transaction form, or submitted electronically, must contain entries for every applicable item on the form, including whether the reporting person intends to take or has taken the action requested. If the reporting person has not decided what action he will take by the time the report is required to be filed, he must later report the action he decides to take within 10 business days after deciding. In addition, anyone filing a report on behalf of another must so indicate and identify that other person.

(7) Each report of a boycott request, whether submitted by mail or electronically, must be accompanied by two copies of the relevant page(s) of any document(s) in which the request appears (*see*, paragraph (c)(2) of this section). For mail submissions, the relevant pages shall be attached in paper format to the report form; for electronic submissions, the relevant pages shall be attached in PDF format to the electronic submission. Reports, whether paper or electronic, may also be accompanied by any additional information relating to the request as the reporting person desires to provide concerning his response to the request. For electronic submissions, such additional information should be provided as a PDF attachment.

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DATED: October 7, 2016.

Matthew S. Borman

Deputy Assistant Secretary for Export Administration

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